

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.) 1:15MC46
)
EMANUEL A. HARRELL,)
)
Respondent.)

ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE
ON PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

This matter came before the Court on October 22, 2015 on the Petition of the United States of America, on behalf of the Internal Revenue Service (“IRS”), under the authority of 26 U.S.C. §§ 7402(b) and 7604(a), to judicially enforce an IRS Summons. At the hearing on October 22, 2015, Nathan L. Strup, Assistant United States Attorney, appeared on behalf of the Petitioner, United States of America. Respondent Emanuel Harrell appeared *pro se* at the hearing.

The United States tendered the Declaration of Revenue Officer Elisa D’Amato, who is a Revenue Officer of the IRS, employed in the Small Business/Self-Employed Division, South Atlantic Compliance Area, and is authorized to issue IRS summonses pursuant to the authority contained in 26 U.S.C. § 7602, and Treasury Regulations, 26 C.F.R. § 301.7602-1. Based on that Declaration, the Court found that the Government made a *prima facie* showing that:

- 1) An investigation is being conducted by Revenue Officer D'Amato pursuant to a legitimate purpose; specifically that the Summons was issued for the legitimate purpose of investigating the federal income tax liability of Emanuel Harrell for taxable years ending December 31, 2009, December 31, 2012, and December 31, 2013 and collecting any such liability, as set forth in the Declaration of Revenue Officer D'Amato attached to the Petition;
- 2) The inquiry made is relevant to the legitimate purpose;
- 3) The information sought is not already within the IRS's possession; and
- 4) The administrative steps required by the Code have been followed. See United States v. Powell, 379 U.S. 48, 57-58 (1964); Alphin v. United States, 809 F.2d 236, 238 (4th Cir. 1987).

At the hearing, and through Revenue Officer D'Amato's Declaration, Petitioner confirmed that there is no Department of Justice referral in effect with respect to the Respondent under investigation, as that term is defined in Title 26 U.S.C. § 7602(d).

Revenue Officer D'Amato personally served Emanuel Harrell with a copy of the Order to Show Cause, the Petition to Enforce Internal Revenue Service Summons, and the exhibits thereto on September 23, 2015. Emanuel Harrell did not file or serve a written response to the Petition nor did he make any motions in response. At the hearing, Emanuel Harrell agreed to the entry of the Enforcement Order.

Based on these determinations, the Court recommends that the Petition by the United States of America be granted and that Respondent Jones be ordered to appear and produce for examination the books, papers, records, or other data as provided in the Summons.

IT IS THEREFORE RECOMMENDED that the Petition [Doc. #1] be GRANTED and that an Order be entered compelling Respondent Emanuel Harrell to obey and fully comply with the Summons by producing to IRS Revenue Officer Elisa D'Amato, or any other person designated by the IRS, all books, records, papers, and other data that are demanded by the Summons and that are in his possession, custody, or control, within two weeks from the date on which the Enforcement Order is entered.

IT IS FURTHER RECOMMENDED that Respondent Emanuel Harrell be ordered to fully comply with the Summons by contacting IRS Revenue Officer Elisa D'Amato, or any other person designated by the IRS, to schedule his interview at a mutually agreeable time, which interview shall take place after the production of records described above, but by no later than December 31, 2015, and by appearing at such interview.

IT IS ORDERED that the United States Marshal for this District serve a copy of this Recommendation upon Respondent Emanuel Harrell, within 14 days of the date of this Recommendation.

This, the 30th day of October, 2015.

/s/ Joi Elizabeth Peake
United States Magistrate Judge